Thomas Vs. Thomas

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SooperKanoon Citation : sooperkanoon.com/867693

Court : Kolkata

Decided On : May-29-1896

Reported in : (1896)ILR23Cal913

Judge : Ameer Ali, J.;Pigot, J.

Appellant : Thomas;young

Respondent : Thomas;young

Judgement :

Ameer Ali, J.

1. The respondent in this case applies for alimony pendente lite for the time previous to the decree nisi. She states in her affidavit that from August 1894 the petitioner has not given her any maintenance, and that she has spent a considerable amount for the maintenance of herself and her children who were living with her. The facts stated in her affidavit have in various respects been contradicted by the petitioner, but when the application was made, I intimated that, if I decided the question of jurisdiction in favour of the respondent, I would refer the questions of fact to the Registrar; and counsel on both sides acquiesced in that course.

2. Mr. Avetoom, for the petitioner, objected that I had no jurisdiction to make the order relating to alimony prior to the decree nisi, on the ground that the action had

ended. N-o case has been cited to show that I have no jurisdiction. I am clearly of opinion that I have jurisdiction. The wife could have applied for alimony after service of the citation on her; but she did not do so. There is no provision precluding me from now making the order asked for.

3. In the case of Foden v. Foden I.L.R. (1894), P.C. 307, to which I referred in the course of the argument, an order granting alimony was made by Mr. Justice Jeune, on the application of the wife after the decree nisi. The case was appealed, and the very same ground now taken was taken by Mr. Inderwick, Q. C, before the Appeal Court. There was, it was said, 'no jurisdiction to make an order for alimony pendente lite. The decree nisi having been made, there was no longer any lis pendens.' Lord Herschell, L. C., after stating the facts, stated the result arrived at as follows:

4. It was contended first that the Court had no jurisdiction to make the order; and, secondly, that if there were jurisdiction, it was not a proper case for its exercise. First of all it was said that there was no pending suit, because a decree nisi had been made. That argument is, in my opinion, quite untenable. Till the decree nisi has been made absolute, the suit is clearly pending.' The same opinion was expressed by Lindley and Davey, L.JJ.

5. That was a much stronger case than the present, because there the action, was for nullity of marriage. Here there is no question that the marriage was valid. The reasoning in that case, therefore, applies more forcibly to this case.

6. I think the wife is entitled to alimony from the date of the service of the citation. As the petitioner says he has made various payments to his wife, and as he also alleges that she has a considerable sum in her hands belonging to him, I refer it to the Registrar to enquire into the facts alleged by the parties, and to report what, if any, alimony under the circumstances that may be established should, in his opinion, be given to the wife prior to the decree nisi, commencing from the date of the service of the citation. He will also consider what provision should be made as to the payment of any alimony, having regard to the facts that the petitioner is in receipt of a monthly income.

7. As to so much of the application as asks for the general costs of this suit, I must follow the decisions of this Court in Probij v. Proby I.L.R. 5 Cal. 357, and Young v. Young1, and the cases referred to at p. 427 of Mr. Belchambers' Book of Practice. No special circumstances have been made out, and I must refuse that part of the application.

8. The costs of this application will be reserved till after the enquiry.

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Decided On: 12.01.1886

Appellants: Young

Vs.

Respondent: Young

Hon'ble Judges:

Pigot, J.